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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/921,980	08/03/2001	Bruce K. Redding JR.	01-40148-US	7672

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EXAMINER

TRAN LIEN, THUY

ART UNIT PAPER NUMBER

1761

DATE MAILED: 03/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/921,980

Applicant(s)

REDDING ET AL.

Examiner

Lien T Tran

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-94 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 34-49 and 56-70 is/are allowed.
- 6) ☒ Claim(s) 1-6,8,9,11-29,32,33,50-55,71-79 81, 82,,83 and 85-89 is/are rejected.
- 7) ☒ Claim(s) 7,30,31,80,84,90 and 91 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

The 112 first paragraph rejection of claims 1-33 and 75-94 is hereby withdrawn due to the amendment to the claims.

The indicated allowability of claims 1-6,11-29,32-33,50-55,71-79, 83,85-89 and 92-94 is withdrawn in view of the newly discovered reference(s) to Kaeser et al.

Rejections based on the newly cited reference(s) follow.

Claims 8,9, 81-82 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 8, the phrase "said at least partially encapsulated leavening agent" does not have antecedent basis because applicant amended the preceding claim to recite "at least partially coated", not partially encapsulated.

Claims 9, 81-82 have the same problem as claim 8.

Claims 1-6,11-29,32-33,50-55,71-79, 83,85-89 rejected under 35 U.S.C. 103(a) as being unpatentable over Selenke in view of Kaeser et al.

Selenke discloses a process for preparing a storage stable premixed batter. The process comprises the steps of forming an aqueous unleavened batter, adding to the batter a sufficient amount of an edible acid so as to lower the pH to below 5, adding an encapsulated alkaline leavening agent and packaging the batter in a container. The pH of the batter is 4, preferably 3.5. By isolating the leavening agent from the remainder of the batter, the pH of the batter can be lowered to inhibit bacterial growth. Additionally, fungistatic agents such as sorbic acid, acetic acid can be added. The batter comprises

flour, eggs, sugar, milk solid, water, oil, emulsifier, vinegar, lactic acid etc... The batter is used to prepare pancake. (see columns 3, 5, the examples and claims.

Selenke does not disclose separating the leavening agent from the batter by using oil to form a layer between the batter and the leavening agent. Selenke also does not disclose adding a nutritional supplement and flavoring to the batter.

Kaesser et al disclose a packaged food product containing a dried component such as cereal and a water containing component in the same container. The dried component and the water containing component are isolated from each other by a hydrophobic fat barrier. The barrier is an oil-containing mass. (see col. 1)

Selenke teaches the isolation of the leavening agent from the batter by encapsulating the leavening agent. However, encapsulation of the leavening agent requires further processing steps as recited on column 4 line 48 through column 5 line 15. Kaesser teaches an alternative method of isolating components by using an oil layer and such alternative method of isolation does not require additional processing steps. It would have been obvious to one skilled in the art to use the method of isolation taught by Kaesser in the batter product of Selenke to eliminate the extra coating step and still obtain the desired end objective of isolating the batter from the leavening agent. The elimination of the coating step reduces processing time and cost. It would also have been obvious to add nutritional supplement to the batter to make the product more nutritional and to add flavorings to enhance the taste and flavor of the product. As to the dispersion of the agent in the oil, this will depend on the particle sizes of the leavening agent; it would have been obvious to use particle of any size. The

suspension of the agent in the oil or the agent being above the oil is not patentably significant because in both instances, the agent is isolated from the batter.


Claims 34-49 and 56-70 are allowable over the prior art. While it would have been obvious to use the isolation method taught by Kaeser in place of encapsulating the leavening agent taught by Selenke, there is no suggestion or motivation to use both oil and encapsulating leavening agent.

Claims 7-10, 30-31, 80-82, 84, 90-91 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. These claims are free of prior art for the same reason set forth above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Wednesday and Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


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3/5/04